

EXHIBIT 1

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 24 2020

RICK WARREN
COURT CLERK

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PATRICIA FITE, surviving spouse of)
RANDALL FITE, deceased,)
Plaintiff,)

MARGARET ESTRADA, Individually and)
as Next of Kin of JAVIER BARRAZA, JR.,)
Deceased,)
Intervenor-Plaintiff)

v.)

LAGOON WATER LOGISTICS, LLC and)
ELITE INFRASTRUCTURE LLC,)
Defendants.)

Case No. CJ-2019-2376

SECOND AMENDED PETITION

Now comes Plaintiff Patricia Fite, surviving spouse of Randall Fite, deceased, and respectfully alleges and files this Second Amended Petition in accordance with 12 O.S. § 2015(A) and the Court's Order granting Plaintiff Patricia Fite's Motion to Amend:

PARTIES

1. Plaintiff Patricia Fite is a citizen of Arkansas and is the surviving spouse of Randall Keith Fite, deceased. Patricia Fite is the real party in interest and has the preeminent right to prosecute this wrongful death action.
2. Annjanette Garza is a resident of Texas and is Next Friend of A.M.C., a minor and child of Javier Barraza, Jr., Deceased. A Motion to Intervene was filed on July 5, 2019.
3. Saida Sanchez is a resident of Texas and is Next Friend of A.L.B., a minor and child of Javier Barraza, Jr., Deceased. A Motion to Intervene was filed on September 17, 2019.
4. Intervenor-Plaintiff Margaret Estrada is a resident of Texas and is the surviving mother of Javier Barraza, deceased. A motion was filed on November 27, 2019 for Margaret Estrada to be named as the

proper next of kin and substituted as the Intervenor-Plaintiff on behalf of all Intervenor-Plaintiff regarding the Estate of Javier Barraza. This Court granted this motion on December 11, 2019.

5. Defendant Lagoon Water Logistics, LLC (“Lagoon Water”) is a limited liability Oklahoma corporation doing business in the State of Oklahoma whose corporate offices are located in Oklahoma County. Lagoon Water was served with summons in this cause on May 10, 2019. An answer was filed on behalf of Lagoon Water Logistics on June 5, 2019.

6. Defendant Elite Infrastructure LLC (“Elite Infrastructure”) is a Texas limited liability company whose headquarters are located at 101 E. Park Blvd., Suite 360, Plano, Texas 75074. Elite Infrastructure was served with summons in this cause on May 16, 2019. An answer was filed on behalf of Elite Infrastructure on June 5, 2019.

JURISDICTION AND VENUE

7. This Court has general jurisdiction pursuant to 12 O.S. § 2004(F).

8. This is a negligence and wrongful death action resulting from an oilfield incident which injured Randall Keith Fite (“Mr. Fite”) and ultimately caused his death. Specifically, after filing Plaintiffs’ Original Petition and First Amended Petition, Mr. Fite died on November 14, 2019 because of injuries he sustained in the oilfield incident. Following his untimely death, Patricia Fite, the surviving spouse of Mr. Fite; and on behalf of Ashley Fite and Troy Fite, Mr. Fite’s wrongful death beneficiaries under Okla. Stat. tit. 12, § 1053; sustained significant damages.

9. Pursuant to 28 U.S.C. § 1441(b)(2), removal to federal court would be improper. Although diversity exists between the Parties, Defendant Lagoon Water is an Oklahoma corporation based in Oklahoma County who has been properly joined and served. This case also does not involve a federal question. *See, e.g., Howard v. Zimmer, Inc.*, 2013 OK 17, 299 P.3d 463. Moreover, there is no other basis for original federal jurisdiction and removal of this action would be improper. *See Watson v. Philip Morris*

Companies, Inc. 551 U.S. 142 (2007).

10. The events giving rise to this suit occurred in Garfield County, Oklahoma.

11. This Court has venue of this matter in controversy because Defendant Lagoon Water has been summoned and is headquartered in Oklahoma County.

12. Venue attaches in Oklahoma County pursuant to 12 O.S. § 134.

STANDING

13. At the time of his death, Randall Keith Fite resided in Arkadelphia, Arkansas. Furthermore, no personal representative is or has been appointed on behalf of the Estate of Randall Keith Fite. Thus, as Mr. Fite's widow, Plaintiff Patricia Fite may properly bring this wrongful death action under Oklahoma law. Okla. Stat. tit. 12, §§ 1053(A), 1054; *see also Roth v. Mercy Health Ctr., Inc.*, 2011 OK 2, 18, 246 P.3d 1079, 1086 (a court's jurisdiction is properly invoked under the Oklahoma wrongful death act "so long as one of the statutorily enumerated parties maintains the action.").

FACTUAL BACKGROUND

14. Defendant Lagoon Water began operating an oil well located at 7800 East Fox Drive, Enid, Garfield County, Oklahoma, ("Kappa SWD #1") and filed a Transfer of Operator form with the Oklahoma Corporation Commission on February 22, 2019. The site contained a tank battery which had been newly constructed shortly before Lagoon Water assumed operations of the well site.

15. On March 4, 2019, Randall Keith Fite ("Mr. Fite") and his co-worker, Javier Barraza ("Mr. Barraza"), were working on the tank battery at Kappa SWD #1 pursuant to a work order from Defendant Elite Infrastructure. The work order directed Mr. Fite and his work crew to add a new vent pipe to a large "gun barrel" oil/water separator tank.

16. Defendant Elite Infrastructure affirmatively led Mr. Fite to believe that the tank was empty and was in a safe condition for him and his coworkers to fulfill the work order. Tragically, this was not true.

When Mr. Barraza began using a torch in order to add a new vent pipe, combustible vapor from crude oil inside caused the top of the tank to explode. This explosion killed Mr. Barraza and severely injured Mr. Fite.

17. On November 14, 2019, Mr. Fite died as a result of these injuries.

**NEGLIGENCE AND/OR RECKLESSNESS OF
DEFENDANT LAGOON WATER LOGISTICS, LLC**

18. Defendant Lagoon Water acted recklessly, failed to use ordinary and reasonable care used by other premises owners operating in the same or similar business and engaged in wrongful actions or omissions that were a proximate, contributing, or sole cause of the explosion in question. These wrongful acts or omissions include, but are not limited to, the following:

- a. Negligently and/or recklessly allowing operations on or near the subject tank when it knew or should have known such tank contained combustible vapor or fluid;
- b. Negligently and/or recklessly failing to warn Randall Keith Fite of the dangerous condition caused by its failure to purge the subject tank;
- c. Negligently and/or recklessly failing to implement proper safety policies and procedures in accordance with OSHA guidelines for working on or near vessels known to have combustible vapors;
- d. Negligently and/or recklessly representing, by and through its agents, that the subject tank was safe to drill in or otherwise work on with an ignition source;
- e. Negligently and/or recklessly hiring, retaining, and supervising its employees and agents on the premises on the date of the explosion; and
- f. Negligently and/or recklessly failing to ensure that the Lagoon Water Logistics work site was a safe workplace free of unreasonably dangerous activities and conditions which it knew or should have known of as the property owner.

19. Each of the wrongful acts and/or omissions enumerated above was a proximate, contributing, or sole cause of the explosion in question, Mr. Fite's severe injuries, and Mr. Fite's untimely death. Accordingly, these acts and/or omissions were also a proximate, contributing, or sole cause of Plaintiff's injuries and damages for which Plaintiff now sues.

**NEGLIGENCE AND/OR RECKLESSNESS OF
DEFENDANT ELITE INFRASTRUCTURE LLC**

20. Plaintiff fully incorporates each and every allegation in the preceding paragraphs as if each were fully iterated verbatim herein.

21. Defendant Elite Infrastructure acted recklessly, failed to use ordinary and reasonable care used by other premises owners operating in the same or similar business and engaged in wrongful actions or omissions that were a proximate, contributing, or sole cause of the explosion in question. These wrongful acts or omissions include, but are not limited, to the following:

- a. Negligently and/or recklessly allowing operations on or near the subject tank when it knew or should have known such tank contained combustible vapor or fluid;
- b. Negligently and/or recklessly failing to warn Randall Keith Fite of the dangerous condition caused by its failure to purge the subject tank;
- c. Negligently and/or recklessly failing to implement proper safety policies and procedures in accordance with OSHA guidelines for working on or near vessels known to have combustible vapors;
- d. Negligently and/or recklessly representing, by and through its agents, that the subject tank was safe to drill in or otherwise work on with an ignition source;
- e. Negligently and/or recklessly hiring, retaining, and supervising its employees and agents on the premises on the date of the explosion; and
- f. Negligently and/or recklessly failing to ensure that the work site was a safe workplace free of unreasonably dangerous activities and conditions which it knew or should have known of as the property owner.

22. Each of the wrongful acts and/or omissions enumerated above was a proximate, contributing, or sole cause of the explosion in question, Mr. Fite's severe injuries, and Mr. Fite's untimely death. Accordingly, these acts and/or omissions were also a proximate, contributing, or sole cause of Plaintiff's injuries and damages for which Plaintiff now sues.

DAMAGES

23. As a direct and proximate result of each Defendant's negligence and/or recklessness, jointly and/or

severally as set forth above, Plaintiff Patricia Fite seeks the following damages in excess of \$75,000:

- a. Randall Keith Fite, in the past, suffered debilitating injuries, conscious pain and suffering of mind and body, and ultimately passed away;
- b. Patricia Fite, in the past and future, has lost consortium and companionship, endured grief, suffered mental pain and anguish, and lost pecuniary support in the past and future from her late husband, Randall Keith Fite;
- c. Ashley Fite and Troy Fite, Randall Keith Fite's adult children, have endured grief, loss of companionship, suffered mental pain and anguish, in past and future; and
- d. Such other damages that Patricia Fite is entitled to recover under law for the loss of her husband and father to their two children, Ashley Fite and Troy Fite.

PUNITIVE AND EXEMPLARY DAMAGES

24. Plaintiff hereby incorporates every preceding enumerated paragraph as if set forth fully herein.

25. Clearly and convincingly, Defendant Lagoon Water acted in reckless disregard of the rights and safety of others and committed a wrongful acted intentionally without just cause or excuse. As a direct and proximate result of these acts, Plaintiff sustained financial and emotional damages and is entitled to an award of actual and consequential damages from Defendant Lagoon Water exceeding \$75,000.00. Plaintiff is further entitled to punitive damages from Defendant Lagoon Water such that a jury should find rightfully due by said Defendant for the sake of example and to punish said Defendant for these acts.

26. Clearly and convincingly, Defendant Elite Infrastructure acted in reckless disregard of the rights and safety of others and committed a wrongful acted intentionally without just cause or excuse. As a direct and proximate result of these acts, Plaintiff sustained financial and emotional damages and is entitled to an award of actual and consequential damages from Defendant Elite Infrastructure exceeding \$75,000.00. Plaintiff is further entitled to punitive damages from Defendant Elite Infrastructure such that a jury should find rightfully due by said Defendant for the sake of example and to punish said Defendant for these acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants Lagoon Water Logistics, LLC and Elite

Infrastructure LLC, jointly and severally, for actual damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with costs, interest, reasonable attorneys' fees, punitive and exemplary damages, and for such other relief which this Court deems just and equitable.

Respectfully submitted,

/s/ Brantley White

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**ATTORNEYS FOR PLAINTIFF
PATRICIA FITE**

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2020 a copy of the above and foregoing was sent by U.S. 1st Class Mail, postage prepaid, to:

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